

48A C.J.S. Judges § 245

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

a. Generally

§ 245. General considerations

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Judges may be disqualified only for proper grounds, and, where the grounds which will operate to disqualify a judge are expressly and comprehensively set forth by statute or rule, such provisions are deemed to be exclusive.

In order that a judge may be disqualified, there must exist a ground authorized by law to disqualify the judge,¹ and it is not for the courts to add other grounds of disqualification.² A judge should not be disqualified lightly or on frivolous allegations or mere conclusions,³ but on proper and reasonable grounds,⁴ and for most compelling reasons⁵ although, under some statutes, a judge may be disqualified without specifying a cause for disqualification.⁶ The fact that a judge has been disqualified once before does not prevent the judge from hearing a case where the present record is devoid of any basis for disqualification.⁷

As a general rule, where the grounds which will operate to disqualify a judge are expressly and comprehensively set forth by statute or rule, such provisions are deemed to be exclusive,⁸ particularly where the grounds for disqualification prescribed by the statutes comprehend all those recognized at common law.⁹ However, disqualification of a judge is not required to be limited to specified statutory grounds,¹⁰ and designated instances prompting disqualification do not exhaust all situations in which a judge's impartiality might be questioned.¹¹ Where the statutory grounds do not comprehend all the common-law disqualifications, the statutory disqualifications are not exclusive of those imposed by the common law.¹²

Where the constitution of the state limits the grounds of disqualification to those enumerated therein, a statute creating a new and different ground is invalid.¹³ On the other hand, where a constitutional provision enumerating the grounds of disqualification is not exclusive, the legislature may by statutory provision establish other grounds.¹⁴

Death threats.

A judge subjected to a death threat by a litigant should recuse if the threat was communicated directly or indirectly to the judge, the judge took the threat seriously, it was substantiated, the judge has taken some action against the defendant to avert the threat, and the judge's judgment could affect the liberty of the defendant.¹⁵

Code of judicial conduct.

A judge is subject to disqualification on the grounds set forth in a code of judicial conduct.¹⁶ The grounds for disqualification in such a code are stated broadly, leaving considerable room for interpretation in their application to any given set of circumstances.¹⁷

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Footnotes

- 1 U.S.—*U.S. v. Wallach*, 788 F. Supp. 739 (S.D. N.Y. 1992), order aff'd, 979 F.2d 912 (2d Cir. 1992) (rejected on other grounds by, *U.S. v. Zuno-Arce*, 25 F. Supp. 2d 1087 (C.D. Cal. 1998)).
- 2 Ind.—*Riddell Nat. Bank v. Englehart*, 123 Ind. App. 517, 106 N.E.2d 465 (1952).
- 3 Cal.—*Mackie v. Dyer*, 154 Cal. App. 2d 395, 316 P.2d 366 (2d Dist. 1957).
- 4 U.S.—*Lazofsky v. Sommerset Bus Co., Inc.*, 389 F. Supp. 1041 (E.D. N.Y. 1975).
 Colo.—*Board of County Com'rs of Pitkin County v. Blanning*, 29 Colo. App. 61, 479 P.2d 404 (App. 1970).
- 5 Alaska—*Nelson v. Fitzgerald*, 403 P.2d 677 (Alaska 1965).
- 6 Mo.—*Fulsom v. State*, 573 S.W.2d 116 (Mo. Ct. App. 1978).
 As to peremptory challenges for change of judge, see § 309.
- 7 Ark.—*Owen v. State*, 263 Ark. 493, 565 S.W.2d 607 (1978).
- 8 Del.—*Reynolds v. Reynolds*, 595 A.2d 385 (Del. 1991).
 La.—*Guidry v. First Nat. Bank of Commerce*, 755 So. 2d 1033 (La. Ct. App. 4th Cir. 2000), writ denied, 762 So. 2d 1106 (La. 2000).
- 9 Ind.—*Riddell Nat. Bank v. Englehart*, 123 Ind. App. 517, 106 N.E.2d 465 (1952).
 N.J.—*Clawans v. Waugh*, 10 N.J. Super. 605, 77 A.2d 519 (Dist. Ct. 1950).
- 10 N.J.—*James v. State*, 56 N.J. Super. 213, 152 A.2d 386 (App. Div. 1959).
- 11 Del.—*Reynolds v. Reynolds*, 595 A.2d 385 (Del. 1991).

- 12 Ala.—Morgan County Commission v. Powell, 292 Ala. 300, 293 So. 2d 830 (1974).
- 13 Tenn.—Moore v. Love, 171 Tenn. 682, 107 S.W.2d 982 (1937).
- 14 N.M.—Moruzzi v. Federal Life & Casualty Co., 1938-NMSC-002, 42 N.M. 35, 75 P.2d 320, 115 A.L.R. 407 (1938).
- 15 U.S.—Te-Ta-Ma Truth Foundation—Family of URI, Inc. v. World Church of the Creator, 246 F. Supp. 2d 980 (N.D. Ill. 2003).
- A.L.R. Library**
Disqualification of judge because of assault or threat against him by party or person associated with party, 25 A.L.R.4th 923.
- 16 Minn.—Powell v. Anderson, 660 N.W.2d 107 (Minn. 2003).
- 17 Minn.—State v. Burrell, 743 N.W.2d 596 (Minn. 2008).

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